

19-3-318. No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:

(a) "Controlling interest" means:

(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or

(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.

(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:

(i) is in the nature of an ownership interest;

(ii) entitles the person to participate in the profits and losses of the organization;

or

(iii) is otherwise of a type generally considered to be an equity interest.

(c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.

(d) "Parent organization" means an organization with a controlling interest in another organization.

(e) (i) "Subject activity" means:

(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or

(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.

(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.

(f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.

(2) (a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.

(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state.

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations.

(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.

(5) (a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.

(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.

(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

Enacted by Chapter 190, 1999 General Session